

***AMENDMENT OF THE CLAIMS***

In accordance with 37 CFR §1.121, please amend the Application as follows:

Claims 28-37 (Cancelled).

Claims 38-46 (Cancelled).

47. (New) A kit to facilitate self-expression by a child, discussions among children or discussions among a child and an adult in connection with attempts by a child to resolve interpersonal conflicts, comprising:

a portable floor covering that symbolizes and physically embodies a dedicated conflict resolution area; and

a first set of instructions comprising a method to be used by a child for self-expression and a method for a child to attempt to resolve said child's interpersonal conflicts through a series of steps, scripted phrases and statements, wherein said self-expression and conflict resolution methods are performed around the perimeter of or on said floor covering.

48. (New) The kit of claim 47, further comprising: a second set of instructions comprising a method for teaching self-expression, interpersonal conflict identification and interpersonal conflict resolution strategies to one or more children.

49. (New) The kit of claim 47, wherein the floor covering has a colored surface pattern connoting peacefulness, calmness, tranquility, or serenity.

50. (New) The kit of claim 49, wherein said colored surface pattern is in pastel or neutral colors.

51. (New) The kit of claim 47, wherein said first set of instructions are provided in media selected from among the group of media consisting of printed material, audiotape, video tape, and digital media.

52. (New) The kit of claim 48, wherein said second set of instructions are provided in media selected from among the group of media consisting of printed material, audiotape, video tape, and digital media.

53. (New) The kit of claim 47, wherein the floor covering is of a shape selected from among the group of shapes consisting of round, oval, triangular, rectangular and square.

54. (New) The kit of claim 47, wherein the floor covering has dimensions such that a number of children engaged in said conflict resolution process will be in substantially close proximity to one another when said children sit or stand on or about the perimeter of said floor covering.

55. (New) The kit of claim 53, wherein the floor covering is rectangular and wherein said rectangular floor covering has dimensions selected from among the group consisting of approximately 2 feet by 3 feet, approximately 3 feet by 5 feet, and approximately 4 feet by 6 feet.

56. (New) The kit of claim 53, wherein the floor covering is circular and wherein said circular floor covering has a diameter selected from among the group consisting of approximately 3 feet, approximately 4 feet and approximately 5 feet.

57. (New) The kit of claim 47, wherein the floor covering is selected from among the group consisting of a rug, a board, a mat and a sheet.

58. (New) The kit of claim 47, wherein the floor covering is made of material selected from among the group of materials consisting of natural or synthetic yarn, cotton, paper, vinyl, linoleum, rubber, latex, plastic, and card board.

59. (New) The kit of claim 47, wherein the floor covering is a rug having soft, pliable yarns.

60. (New) A kit to facilitate self-expression by a child, discussions among children or discussions among a child and an adult in connection with attempts by a child to resolve interpersonal conflicts, comprising:

a rug of soft, pliable yarns, wherein said rug has dimensions selected from among the group consisting of approximately 3 feet diameter, 4 feet diameter, 5 feet diameter, 2 feet by 3 feet, 3 feet by 5 feet, and 4 feet by 6 feet, and wherein said rug has a colored surface pattern connoting peacefulness, tranquility, serenity and calmness, and wherein said rug symbolizes and physically embodies an area designated for conflict resolution; and

a first set of instructions comprising a method to be used by a child for self-expression and a method for a child to attempt to resolve said child's interpersonal conflicts through a series of steps, scripted phrases and statements, wherein said self-expression and conflict resolution methods are performed around the perimeter of or on said floor covering.

61. (New) The kit of claim 60, further comprising: a second set of instructions comprising a method for teaching self-expression, interpersonal conflict identification and interpersonal conflict resolution strategies to one or more children.

62. (New) A kit to teach children a method of self-expression or a method to attempt to resolve interpersonal conflicts, comprising:

a portable floor covering symbolizing and physically embodying a dedicated conflict resolution area; and

a set of instructions comprising a method to teach children how to find their voice by identifying the occurrence of an interpersonal conflict and identifying their feelings about said interpersonal conflict, and a method to attempt to resolve said interpersonal conflict through a series of steps, scripted phrases and statements to be performed around the perimeter of or on said floor covering.

63. (New) The kit of claim 62, wherein the floor covering has a colored surface pattern connoting peacefulness, calmness, tranquility, or serenity.

64. (New) The kit of claim 62, wherein said first set of instructions are provided in media selected from among the group of media consisting of printed material, audiotape, video tape, and digital media.

65. (New) The kit of claim 62, wherein said second set of instructions are provided in media selected from among the group of media consisting of printed material, audiotape, video tape, and digital media.

66. (New) The kit of claim 62, wherein the floor covering is of a shape selected from among the group of shapes consisting of round, oval, triangular, rectangular and square.

67. (New) The kit of claim 62, wherein the floor covering has dimensions such that a number of children engaged in said conflict resolution process will be in

substantially close proximity to one another when said children sit or stand about the perimeter of said floor covering.

68. (New) The kit of claim 65, wherein the floor covering is a rectangular and wherein said rectangular floor covering has dimensions selected from among the group consisting of approximately 2 feet by 3 feet, approximately 3 feet by 5 feet, and approximately 4 feet by 6 feet.

69. (New) The kit of claim 66, wherein the floor covering is circular and wherein said circular floor covering has a diameter selected from among the group consisting of approximately 3 feet, approximately 4 feet and approximately 5 feet.

70. (New) The kit of claim 62, wherein the floor covering is a selected from among the group consisting of a rug, a board, a mat and a sheet.

71. (New) The kit of claim 62, wherein the floor covering is made of material selected from among the group of materials consisting of natural or synthetic yarn, cotton, paper, vinyl, linoleum, rubber, latex, plastic, and card board.

72. (New) The kit of claim 71, wherein the floor covering is a rug having soft, pliable yarns.

73. (New) A kit to teach children a method of self-expression or a method to attempt to resolve interpersonal conflicts, comprising:

a rug of soft pliable yarns, wherein said rug has dimensions selected from among the group consisting of approximately 3feet diameter, 4 feet diameter, 5 feet diameter, 2 feet by 3 feet, 3 feet by 5 feet, and 4 feet by 6 feet, and wherein said rug has a colored surface pattern connoting peacefulness, tranquility, serenity

and calmness, and wherein said rug symbolizes and physically embodies a dedicated conflict resolution area; and

a first set of instructions comprising a method to teach a child how to identify the occurrence of an interpersonal conflict, identify the child's feelings about said interpersonal conflict, and teach said child appropriate language to express said feelings; and

a second set of instructions comprising a method to be used by a child to to express the child's feelings and to attempt to resolve said interpersonal conflict through a series of steps, scripted phrases and statements, wherein said self-expression and conflict resolution methods are to be engaged in around the perimeter of or on said rug.

## ***RESPONSE***

It is believed that the amended claims are fully supported by the Specification, do not introduce new matter and do not require additional search.

### **Examiner's Response to Applicant's Prior Amendment**

On page 2 of the Office Action dated March 4, 2005, the Examiner states that "applicant's invention appears to be a method of using a rug (known in the art), a container for holding a rug (known in the art) and a set of instructions for their use (also known in the art), thus it is not the rug, container and instructions that are the actual invention, but rather the method of use therefore." Applicant respectfully disagrees and submits that the Examiner may not fully understand the nature of Applicant's invention.

In the related U.S. Divisional Application No. 11/000,416, Applicant claims a novel, non-obvious method to be used by children to "find their voice" by sharing hurt feelings in an emotionally safe and non-harmful way (see Specification page 10, lines 5-7), to identify when they are involved in a conflict, to identify and express their feelings about the conflict situation, and to use the proper language and communication strategies to attempt to resolve interpersonal conflicts.

The claims of the present application are directed to a novel, non-obvious (a) kit for teaching children to "find their voice" and for teaching children a method of conflict resolution, and (b) a kit to be used by children to express their feelings and to attempt to resolve their interpersonal conflicts.

The kit comprises a portable floor covering and instructions (1) describing the method of gathering on or around the floor covering (preferably a soft rug) to express

one's feelings or to engage in a conflict resolution method, and (2) describing how to teach children how to "find one's voice" and teach children a conflict resolution method.

### **Claim Objections**

The Examiner objects to the phrasing of Claim 40. Claim 40 has been cancelled, thereby obviating the objection.

### **Claim Rejections Under 35 U.S.C. § 112**

The Examiner has rejected claims 42-43 under 35 U.S.C. § 112 ¶ 2, as being indefinite. Claims 42 and 43 have been cancelled, thereby obviating the rejection.

### **Claim Rejections Under 35 U.S.C. §103(a)**

#### **A. Erumsele '631 and Joyce '000 Are Not Proper Prior Art References.**

The Examiner has rejected Claims 38-46 as being unpatentable over *Erumsele* (U.S. Patent No. 4,787,631) in view of *Joyce* (U.S. Patent No. 5,679,000). To establish a *prima facie* case of obviousness, the cited references must be either in the field of Applicant's endeavor or reasonably pertinent or analogous to the specific problem with which the inventor was involved. *In re Deminski*, 797 F.2d 436, 230 USPQ 313, 325 (Fed. Cir. 1986). A reference is reasonably pertinent if it logically would have commended itself to the inventor's attention in consideration of his problem, *i.e.*, if the reference disclosure has the same purposes or relates to the same problem as the claimed invention. See, *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992).



Applicant respectfully submits that *Erumsele* '631 and *Joyce* '000 are not relevant or proper prior art.

Applicant's invention is in the behavioral/ psychological sciences, particularly conflict resolution among children (see, Specification, Field of Invention). The invention was developed in connection with Applicant's doctoral dissertation *The Peace Rug: Its Effectiveness and Value as a Conflict Resolution Tool*, for which Applicant obtained a Ph.D. in Counseling Psychology (see Declaration, Exhibit A).

*Erumsele* and *Joyce* are in the field of children's entertainment and games (see *Erumsele* '631, col.1, lines 5-10, *Joyce* '000, col. 1, lines 6-12). *Erumsele* '631 discloses a game in which coordination and physical skills are tested. *Joyce* '000 discloses a game in which knowledge of other cultures is tested. These references do not have the same purpose as the invention and are not relevant to the problem addressed by Applicant's invention – how to teach children to express hurt feelings and peacefully resolve interpersonal conflicts on their own (Specification, page 8, lines 15-24). Nothing in either *Erumsele* '631 or *Joyce* '000 pertains to teaching children to "find their voice", identify interpersonal conflicts, express their hurt feelings about interpersonal conflicts, or how to attempt to peacefully resolve interpersonal conflicts.

Therefore, Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness, and the application should be allowed.

B. Functional Relationship of Instructions to the Rug.

The Examiner cites *In re Ngai* and *In re Gulack* for the proposition that "when the claimed printed matter is not functionally related to the substrate it will not distinguish

the invention from the prior art in terms of patentability . . . Thus, there is no novel and unobvious functional relationship between the printed matter (e.g. script text) and the substrate (e.g. instruction) which is required for patentability." (emphasis added). As stated above, *Erumsele* and *Joyce* are not relevant prior art, thus, Applicant is not required to establish a patentably distinct functional relationship between the instructions and the rug in order to overcome *Erumsele* and *Joyce*.

In *Gulack*, 703, F.2d 1381, 217 USPQ 401 (Fed. Cir. 1983) the appellant and the board agreed that the content of the printed matter was the sole difference between the application and the prior art. The court held that digits printed (content) on a band did have a functional relationship distinct from the prior art. The prior art digits were for support and display. The digits and the band in *Gulack* were found to have two functional relationships: (1) the band supported the digits; and (2) there was an endless sequence of digits having a unique position with respect to each other digit. Thus, the distinguishing content of the printed matter was critical to the invention disclosed by *Gulack*. The court held that the prior art did not disclose or suggest the functional relationship disclosed by *Gulack*'s invention.

*In re Ngai*, 70 USPQ2d 1862 (Fed. Cir. 2004) concerned a kit for performing a new method of amplifying ribonucleic acids. As admitted by *Ngai*, the prior art consisted of kits containing the reagents and instructions for amplifying ribonucleic acids. *In re Ngai* at 1863. *Ngai* argued that the addition of new printed matter to a known product (kit) made the product (kit) patentable. In comparing *Ngai* to *In re Gulack*, the court reasoned that "[i]n *Gulack*, the printed matter would not achieve its educational purposes

without the band, and the band without the printed matter would similarly be unable to produce the desired result . . ." *Id.* at 1864.

As in *Gulack*, the Applicant's instructions have the requisite functional relationship to the substrate (rug). The kit of the present application comprises a portable floor covering and instructions. The instructions describe the method of gathering around the floor covering to express one's feelings or to engage in a conflict resolution method. The floor covering is dedicated as a "conflict resolution area" and is used only for "finding one's voice" or the conflict resolution process so that children learn to associate the floor covering with a safe place where they may express themselves in a respectful manner without being subjected to interruption, disrespect, criticism or judgment (Specification, page 8, lines 15 to 24). The floor covering is functionally related to the instructions because it provides the physical "meeting place" for the children to express themselves and to come together to participate in the conflict resolution process, as described in and taught by the instructions.

The Specification clearly discloses the functional relationship between the floor covering and the methods/instructions as follows:

- A further object of the present invention is to provide a definite, decisive "place" that is small, portable, and cost effective, where one or more persons could gather to share thoughts and feelings in a respectful and safe way. (page 3, lines 16 to 19).
- The process begins by a first party extending an invitation to at least one second party with whom he or she has a conflict, to join

the first party around The Peace Rug. All concerned sit either on, or in proximity, to the Peace Rug, facing each other during the entire [conflict resolution] process. (page 4, lines 18-21).

- The important aspect of The Peace Rug is that it defines a specific control area called a "conflict resolution area (CRA) . . . to which individuals may expect to go to resolve their conflicts with others. (page 6, lines 24 to 27).
- In short, it is explained that when a conflict arises or is sensed, there is a need to go to The Peace Rug and talk things out in a peaceful and respectful way before it explodes into a violent situation. (page 7, lines 24 to 27).
- The focal point provided by the physical aspect of gathering around The Peace Rug in face-to-face contact, together with the script and procedural rules in a predefined location, provide an opportunity for the interpersonal skills associated with the aforementioned elements to become integrated for each participant. (page 8, lines 20 to 24)
- Where a conflict or violent behaviour is evident, a leader may take the initiative and inquire of those having the conflict "Would you be willing to go to The Peace Rug to talk and to work through these conflicts in order to arrive at some agreement?" or "Would you please go to The Peace Rug to work out our conflicts?" or

"Could we please talk about our conflicts on The Peace Rug?"

(page 9, lines 7 to 12).

- Even if no resolution is obtained through the structured discussion around The Peace Rug, nevertheless, The Peace Rug itself becomes a place where a participant found his or her "voice", realizing that he or she did all that could be done to resolve the conflict according to proper principles, providing a sense of satisfaction and general well being. (page 11, lines 3 to 7).

In the Interview of November 5, 2004, the Examiner suggested that floor coverings are known to include a set of instructions for cleaning and care of the floor covering. However, Applicant's instructions do not describe how to care for or clean the floor covering, but instead describe a novel method of teaching and engaging in particular communication techniques to resolve interpersonal conflicts. The methods described in Applicant's instructions use the floor covering as a symbolic and physical "safe" space to express feelings and attempt to resolve interpersonal conflicts. Thus, the method of self-expression and conflict resolution is functionally related to the rug. As claimed, the methods described in the instructions cannot be taught or practiced by children without the rug (Specification, page 8, lines 15 to 24). Without the instructions, one would not know how to use a floor covering as a tool for self-expression or conflict resolution. The rug functions as the dedicated conflict resolution area in which to engage in self-expression and conflict resolution, as taught by the method; without the floor covering,

the conflict resolution method could not achieve its stated educational purpose (Specification, page 8, lines 15 to 24).

As in *Gulack*, a novel and non-obvious functional relationship does exist between the contents of the printed material (method of teaching and participating in conflict resolution process) and the substrate (floor covering/rug). Thus, the functional relationship between Applicant's instructions and the rug are sufficient to patentably distinguish Applicant's invention over the prior art. Applicant respectfully requests that the rejection be withdrawn.

C. Specific Elements of *Erumsele '631* and *Joyce '000*.

*Erumsele '631* discloses a rug-like playing surface colored to represent a body of water and representations of woodland settings (col. 2, lines 6-12) to convey a lumber-jack log-rolling contest. For anyone who has seen such a contest, this pattern would suggest motion and the activity of rolling a log on top of a body of water. In contrast, the present invention discloses a unspecified pattern in soothing colors that connotes peacefulness, tranquility, calmness or serenity. Clearly, a surface pattern that suggests the activities associated with a log-rolling contest (substantial physical action and movement) will not have a peaceful, tranquil, calming or serene connotation.

Neither *Erumsele '631* nor *Joyce '000* discloses a communication strategy (statements and scripted phrases) to be spoken to resolve interpersonal conflicts. *Joyce '000* discloses a game and instructions for playing the game, but such instructions do not include a method to teach self-expression or conflict resolution techniques. As argued

above, the functional relationship between the contents of the kit instructions patentably distinguish the present invention over the cited prior art.

D. *In re Casey* and *In re Otto* Are Inapplicable .

The Examiner also cites *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) as holding that a claim limitation based upon the use of the claimed invention must result in a structural difference in order to patentably distinguish the claim over the prior art, and that if the prior art structure is capable of performing the intended use then it meets the claim. However, *Casey* is distinguishable from the present application. *Casey* claimed a machine known in the prior art, specifically a tape dispensing machine that had, *inter alia*, "projecting bristles which terminate in free ends to collectively define a surface to which adhesive tape will detachably adhere . . ." *Id.* at 235. The court found that the prior art disclosed a brush bristle surface identical to *Casey's* and if used as disclosed in *Casey's* claim, the terms of *Casey's* claim would be met by the prior art. Thus, "[t]he manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself." *Id.* at 238 (emphasis added).

Unlike *Casey*, the present application does not claim a machine but claims a kit for teaching conflict resolution strategies to children and a kit to be used by children to facilitate attempts to resolve their interpersonal conflicts. Applicant does not claim the floor covering/rug as a patentable device limited to a specific use. Thus, *In re Casey* is not applicable to the presently claimed invention.

The Examiner also cites *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963) as holding that for a claim drawn to a process of making, the intended use must result in a

manipulative difference as compared to the prior art. *Otto* specifically involved claims to a device and a method of making the device, namely "a core member for hair curlers comprising a body of elastically resilient foam material, the hair being wound directly on said body . . ." *Id.* at 458 (emphasis added). The court stated that "the structure [device] claims do not recite any means by which the core member could be attached to the hair and thus the *manner* of its intended use is of no significance . . ." *Id.* at 460 (emphasis in original). *Otto* is also in apposite to the present case because Applicant does not claim a device (or method of making a device) that contains a limitation as to the use of the device or material to be worked upon by the device.

Relying on *Casey* and *Otto*, the Examiner reasons that Erumsele is capable of functioning as a system for conflict resolution because "two members playing a game can easily overcome their differences," and Applicant's claim to a kit is not patentably distinguishable from Erumsele. As argued above, *Casey* and *Otto* are inapplicable to the present invention and claim as presently amended. Furthermore, Applicant respectfully submits that there is no factual or legal basis for the Examiner's assertion that Erumsele can act as a kit to teach conflict resolution strategies or to be used by children to attempt to resolve interpersonal conflicts. Nothing in Erumsele discloses or suggests that the game may be used to help children "find their voice" or attempt to resolve their interpersonal conflicts. Furthermore, as argued above, Erumsele is wholly inapplicable to the present application because it is not relevant prior art – it is not within the "art" to which Applicant's invention pertains and is not reasonably related to solving the same problems as those addressed by Applicant's invention.



Finally, the Examiner cites *In re Ngai* for the proposition that a kit which differs from prior art in a manner of use as demonstrated by a set of instructions is NOT patentable in a product type claim and should rather be directed to a method patent. *Ngai* argued that the addition of new printed matter to a known product (a kit for amplifying RNA) made the known kit patentable. *Ngai* at 1863. Applicant respectfully submits that the Examiner has not cited any prior art kit comprising a floor cover/rug and instructions teaching a method of self-expression or conflict resolution. Thus, the holding of *Ngai* is not applicable to this application.

*In re Gulack* is most applicable to the present application. In *Gulack*, the court found that the printed matter would not achieve its educational purposes without the band, and the band without the printed matter would similarly be unable to produce the desired result. As in *Gulack*, the Applicant's instructions have the requisite functional relationship to the substrate (floor covering/rug). The instructions describe the method of gathering around the floor covering to express one's feelings or to engage in a conflict resolution method. The floor covering is dedicated as the "conflict resolution area" and is used only for "finding one's voice" or the conflict resolution process so that children learn to associate the floor covering with a safe place where they may express themselves in a respectful manner without being subjected to interruption, disrespect, criticism or judgment.

The floor covering of the present invention is clearly functionally related to the instruction because it provides the physical "meeting place" for the children to express themselves and to come together to participate in the conflict resolution process, as described in and taught by the instructions. "As a result of prior instruction and a